



STATE OF MAINE  
PUBLIC UTILITIES COMMISSION  
18 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0018

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May 5, 1997

John D. Dingell, Ranking Member  
U.S. House of Representatives  
Committee on Commerce  
Room 2125, Rayburn House Office Building  
Washington, D.C. 20515-6115

Dear Mr. Dingell:

The following are my responses to the questions posed in your April 10, 1997 letter. I am answering on behalf of the Maine Public Utilities Commission; I cannot, of course, answer on behalf of "the State" and all its agencies except to the extent the Commission has been made aware of positions they have taken. In addition, I have enclosed a copy of the Maine Public Utilities Commission's Report and Recommended Plan for Electric Restructuring. We recently submitted the Report and Plan to our State Legislature; the Legislature is currently considering electric restructuring and retail competition for Maine.

1. **Has your Commission or State legislature considered or adopted retail competition? If retail competition is occurring at this point, what effect has it had on consumer prices?**

Maine's legislature is currently considering retail competition. Please see the Commission's report and recommended plan for retail competition (attached).

2. **Has your State asked Congress to enact legislation mandating retail competition? Has it sought Congressional action to enable or assist it in adopting retail competition? Has it requested or recommended any other type of Congressional action?**

No to all the above.



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- 3. Does your Commission currently have sufficient authority to resolve stranded cost issues in the event Congress enacts legislation providing for retail competition by a date certain? If not, what timing and other problems might ensue? What could Congress do to address any such problems?**

Some problems could arise surrounding the boundaries between FERC and state jurisdiction. Congress could address these by clarifying that states have jurisdiction over all retail stranded costs.

- 4. Are there any other areas in which your State currently does not have the necessary authority to address issues arising from federal legislation mandating competition, or repeal of the Public Utility Holding Company Act of 1935 (PUHCA) or the Public Utility Regulatory Policies Act of 1978?**

The Maine Legislature would have authority over most restructuring issues. Problems could arise over authority in areas that, arguably, impact interstate commerce.

- 5. Would any constitutional issues be raised by federal legislation:**

- a. mandating that states choose between adopting retail competition by a date certain and having a federal agency preemptively impose retail competition?**

We have not researched this matter, but are currently not aware of any constitutional issues.

- b. requiring states to conduct a proceeding on retail competition, reserving to the states discretion not to adopt retail competition if they determine doing so would not be in its consumers' best interests?**

Same as response to a.

- 6. From a practical standpoint, what problems would arise if Congress adopted legislation mandating retail competition which did not grandfather prior state action?**

This would depend on the detail specified in any congressional legislation. General problems could include the need for states to undue, or redo, prior actions, plans, or established processes.

- 7. In hearings before the Energy and Power Subcommittee during the last Congress, some witnesses took the position that Congressional legislation mandating retail competition is necessary to protect the interests of small and residential consumers. This was based on the assertion that large**

**industrial customers are able to negotiate lower rates with state utility commissions, and that the incidence of such rate reductions is on the increase.**

- a. Are you aware of any study or analysis relevant to your State that supports this conclusion?**

Our Commission does not negotiate rate arrangements with industrial customers. However, many large industrial customers in Maine have successfully negotiated lower rates with electric utilities. The incidence of these negotiated rates has increased, relative to, e.g., five years ago.

- b. Please provide any information you can on the historical relationship between residential and industrial rates, the extent to which one customer class has subsidized another, and whether or not this trend has altered in recent years.**

Both residential and industrial classes in Maine pay rates in excess of their marginal cost; thus one does not subsidize the other in a strict sense. Because of discount rate arrangements, amounts above marginal cost these classes contribute has generally decreased more for industrial classes in recent years than for residential classes.

- 8. Although electricity rates vary widely within the U.S., they have fallen recently in some parts of the country. Please provide any information you can about rate trends in your State, and how they affect various customer classes.**

In recent years, electric rates for most customers in Maine have been increasing at or below the rate of inflation. Rates for Maine's largest industrial customers have actually decreased, or stayed flat.

- 9. Some proponents of retail competition hold the view that all electricity resources should be sold at a market price and that state authority to regulate retail rates should be eliminated. How would such a policy affect shareholders and ratepayers? What mechanisms could states or Congress employ to manage these issues? In a restructured electric industry, who should receive the benefits of these low-cost resources -- utility ratepayers, utility shareholders or the highest bidder?**

If such a policy were immediately implemented in Maine, utility shareholders would face unrecovery of significant stranded cost amounts. Electric rates would immediately decrease.

Please see the attached report for the Commission's view of how costs stranded by retail competition should be treated.

- 10. Of those states which have adopted retail competition, how many have addressed the issue of "reciprocity," (that is, whether or not the state can bar sellers located in states which have not adopted retail competition from access to its retail markets)? Whose interests does a reciprocity requirement affect? Is a reciprocity requirement the only way to protect those interests, or are there alternatives? Would such a requirement raise constitutional issues?**

I am not aware of any state that has adopted reciprocity. The Commission's report (attached) recommends against such a requirement for Maine.

Reciprocity generally protects the interests of incumbent utilities. There are alternatives to protect utilities (e.g., through a reasonable stranded cost recovery plan). A reciprocity requirement would raise interstate commerce issues.

- 11. If Congress were to require "unbundling" of local distribution company services as part of a retail competition mandate, what practical problems might this present to state regulators?**

Some degree of unbundling is obviously necessary in the context of retail competition; this is so whether Congress mandates retail competition or states adopt it on their own. Depending on the timing, type and degree of unbundling, practical and implementation problems in areas such as corporate restructuring, cost allocation and metering and billing could arise.

- 12. Does your Commission face particular problems in connection with public power or federal power in an increasingly competitive electricity market?**

Problems for Maine arise because of competitive disadvantages faced by businesses and industry in the state vis-a-vis states that have public or federally subsidized power.

- 13. How would federal legislation mandating competition by a near term date certain affect funding needs for your Commission? If additional funding were needed, would it be available, and what problems might arise if it were not?**

How any federal mandate affected any funding needs would depend on the nature of the mandate. It is unclear at this time whether additional funding, if needed, would be available. Inadequate funding could mean that competition would be implemented poorly. Poor implementation could lead

to a variety of problems in areas such as reliability, market power, and inadequate consumer protections and information.

- 14. Has your Commission considered or adopted securitization plans as a means of providing for recovery of utility stranded assets? What risks are inherent in this approach, and who bears them?**

We have considered securitization generally. We have not yet considered any specific plan. Among the risks inherent in securitization are: locking in amounts that turn out to be in error; insufficient benefits for ratepayers relative to the increased benefits provided shareholders and; increasing the State's credit riskiness. In general, securitization shifts risks from utility shareholders to ratepayers and, potentially, the state. We have nevertheless recommended that securitization be examined to determine whether the value of this shift in risk is large enough to be worth capturing as a way of reducing stranded costs.

- 15. There is a wide divergence of opinion as to whether or not PUHCA should be modified or repealed. Given the record level of merger activity, this question may become significant for all state regulators, whether or not they currently have regulatory responsibilities relating to registered holding company activities.**

- a. Do you believe PUHCA impedes competition, at the wholesale or retail level? Can "effective competition" be achieved regardless of whether Congress enacts changes to PUHCA?**

There are no registered holding companies in Maine; we have not studied the issue.

- b. Do you believe Congress should modify or repeal PUHCA? If so, why, and under what if any conditions?**

Same as above.

- c. Should Congress enact legislation to modify the holding in Ohio Power Co. v. FERC, 954 F.2d 779 (D.C. Cir. 1992)?**

Same as above.

If you have any questions about any of these responses, or need additional information, please contact Faith Huntington at (207)287-1373.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. L. Welch', with a long horizontal flourish extending to the right.

Thomas L. Welch, Chairman